MISSOURI COURT OF APPEALS WESTERN DISTRICT

DAVID KASPER, ET UX.,

APPELLANTS,

v.

RANDALL W. WELHOFF, ET AL.,

RESPONDENTS.

DOCKET NUMBER WD69329

DATE: September 8, 2009

Appeal From:

CASS COUNTY CIRCUIT COURT

THE HONORABLE JOSEPH PAUL DANDURAND, JUDGE

Appellate Judges:

Division One: James E. Welsh, P.J., Victor C. Howard and Alok Ahuja, JJ.

Attorneys:

Matthew J. Hamilton, Esq., Pleasant Hill, MO for Appellants
Jane A. Landrum, Esq., Kansas City, MO for Respondent Matthew J. Hamilton
Michael T. Halloran, Esq., Overland Park, KS for Respondent Jerry Click
Mark D. Chuning, Esq., Kansas City, Mo for Respondent Randall Welhoff
William M. Mallory, Esq., Overland Park, KS for Respondent Wilma Strickland



MISSOURI APPELLATE COURT OPINION SUMMARY COURT OF APPEALS – WESTERN DISTRICT

DAVID KASPER, ET UX.,)	
APPELLANTS,)	
)	
V.)	WD69329
)	
RANDALL W. WELHOFF, ET AL.,)	FILED: SEPTEMBER 8, 2009
RESPONDENTS.)	

WD69329 Cass County

Before Division One Judges: James E. Welsh, P.J., Victor C. Howard and Alok Ahuja, J.J.

This case arises out of a five-car collision that occurred on Missouri Highway 291 on May 31, 2002. Plaintiff-Appellant David Kasper was driving the final car in the five-vehicle, southbound group. Allegedly without warning or signaling, the first car in the group, driven by Defendant-Respondent Click, slammed on its brakes, came to an almost complete stop, and then turned left onto a side road. The three vehicles behind Click (driven respectively by Tolly, Strickland, and Welhoff) also braked rapidly, coming to a complete stop on the highway. Tolly was apparently able to stop without striking Click; the parties dispute whether Strickland and Welhoff were also able to stop successfully. As Kasper crested a hill, he saw Welhoff's vehicle ahead, with brake lights unilluminated. Kasper glanced in his rearview mirror at a truck following behind him. When he looked back to the front, he saw that Welhoff's brake lights were lit. Kasper applied his brakes in an attempt to stop, but was unable to do so before colliding with Welhoff.

The Kaspers filed suit against Click, Tolly, Strickland, and Welhoff, alleging that David Kasper suffered injuries as a result of the collision, and that Rhonda Kasper suffered a loss of consortium. The trial court granted summary judgment in favor of each of the Respondents. The court indicated it was granting summary judgment because: (1) David Kasper's admissions established that it was his own inattention to the vehicles ahead that was the proximate cause of the accident; and (2) that, in addition, the conduct

of Tolly, Strickland, and Click was too remote to constitute the proximate cause of the Kaspers' damages.

REVERSED.

Division One holds:

As to Respondent Welhoff (driver of the vehicle immediately in front of Kasper's), there is sufficient evidence from which a jury could find that Welhoff failed to provide Kasper with a warning sufficient to give Kasper enough time to stop before colliding with Welhoff's car. Kasper testified that he was following Welhoff at a safe distance, meaning a distance sufficient to permit him to safely stop his vehicle if necessary without hitting the forward vehicle. Kasper testified that, as he crested the hill, he saw Welhoff's truck, brake lights unlit. Kasper then glanced in his rearview mirror at the vehicle behind. When Kasper looked forward again, Welhoff's brake lights were lit, but Kasper had insufficient time in which to negotiate a safe stop. The testimony of other Resondents indicates that Welhoff was following the vehicles ahead too closely, without sufficient time to safely stop. The fact that Kasper may have diverted his eyes briefly to his rear-view mirror before the impact occurred does not establish Welhoff's right to judgment as a matter of law.

Summary judgment must also be reversed as to Respondent Click, the first driver in the group. The evidence indicates that, before the Kasper-Welhoff collision, the driver immediately behind Click (Tolly) was able to stop without hitting Click. Nevertheless, the evidence concerning Click's sudden, unexpected, and unsafe stopping and left turn would permit a jury to find that, if Click had given adequate warning of his intention to turn, this would have enabled the other drivers in the line of cars to slow more gradually, and to provide further notice to the vehicles following them.

There is a genuine factual dispute as to whether Welhoff stopped before hitting Strickland, and whether Strickland stopped before hitting Tolly, prior to the Kasper-Welhoff collision. But even if the vehicles immediately following them had successfully stopped, the cases Respondents cite establish no hard-and-fast rule that proximate causation cannot be established where intervening vehicles are able to stop without incident before a trailing driver's collision. Here, the evidence would permit a jury to find that because of Strickland's and Tolly's failure to maintain a safe distance from the car ahead, and their inattention, they failed to give the drivers behind them an adequate and timely warning of their intention to stop their vehicles.

Opinion by: Alok Ahuja, Judge September 8, 2009

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